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10/537,447

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EXAMINER

KRUPICKA, ADAM C

ART UNIT

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1794

MAIL DATE

DELIVERY MODE

02/05/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/537,447	<b>Applicant(s)</b> IWASAKI, YOSHIO	
	<b>Examiner</b> Adam C. Krupicka	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/22/2005, 10/23/2006, 03/07/2007, 04/17/2007,</u>           | 6) <input type="checkbox"/> Other: ____.                          |
| <u>07/18/2007, 09/26/2007, 04/11/2008, 07/30/2008, and 10/22/2008.</u>                 |   |



## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed October 23, 2006 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the indicated information referred to therein has not been considered.

### ***Claim Objections***

**Claims 2 and 10** are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

**Applicant's claim 2** is not considered to be further limiting because the sealant layer of the parent claim is bonded to an article by thermocompression, which the examiner considers to be heat and pressure. Since the sealant layer is activated and useable under heat and pressure no additional limitation is considered to be imposed by stating that the sealant layer is a heat activated pressure sensitive adhesive.

**Applicant's claim 10** is not considered to be further limiting because it attempts to provide structural limitations to an article usable with the instant invention (*a product display*

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*strip*). Since a bag with a sealant layer and a substrate layer would already be bondable to the display strip as claimed in the parent claim, no further limitation is considered to be placed on the display strip.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claims 1, 2 and 10** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 22 of copending Application No.

11/565,595. Both the instant and copending application claim a display strip with a substrate layer and a sealant layer. The copending application does not explicitly claim that the sealant layer is re-bondable to the bag after the bag is peeled away, however in the copending application, even if a portion of the sealant layer is removed during the peeling of the bag, one of ordinary skill in the art would have found it obvious to reattach the bag in another location,

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where the sealant layer had not been removed. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

**Claims 1 and 2** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 11/259,416. Both the instant and copending application claim a display strip with a substrate layer and a sealant layer. The copending application does not explicitly claim that the sealant layer is re-bondable to the bag after the bag is peeled away, however in the copending application, even if a portion of the sealant layer is removed during the peeling of the bag, one of ordinary skill in the art would have found it obvious to reattach the bag in another location, where the sealant layer had not been removed. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

**Claims 1 and 2** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-4 of U.S. Patent No. 7,147,913. Both the instant application and the patent have a substrate layer and a sealant layer, where a bag is bondable by thermocompression and can be re-bonded after the bag has been peeled away. The display strip in the issued patent is consider to have a bag re-bondable to it because the peeling takes place at the interface between the sealant layer and the bag, not destroying either.

**Claims 1 and 2** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,476,441. Both the instant application and the patent comprise a product display strip with a sealant layer and a substrate where a bag is heat sealable to the display strip and the bag comprises a sealant layer and a substrate layer. The patent does not explicitly claim that the sealant layer is re-bondable to the

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bag after the bag is peeled away, however in the patent, even if a portion of the sealant layer is removed during the peeling of the bag, one of ordinary skill in the art would have found it obvious to reattach the bag in another location, where the sealant layer had not been removed.

**Claims 1 and 2** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 7,160,595. Both the application and the instant patent comprise a product display strip with a sealant layer and a substrate where a bag is heat sealable to the display strip and the bag comprises a sealant layer and a substrate layer. The patent does not explicitly claim that the sealant layer is re-bondable to the bag after the bag is peeled away, however in the patent, even if a portion of the sealant layer is removed during the peeling of the bag, one of ordinary skill in the art would have found it obvious to reattach the bag in another location, where the sealant layer had not been removed.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**Regarding applicant's claims 1 and 10**, it is unclear what limitation is being set forth by the phrase "being bondable to the bag again owing to exposure of a pressure sensitive adhesive face in the case of peeling of the bag bonded by the thermocompression bonding". Also, the

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instant claims appears to be directed towards a display strip, but it is unclear whether applicant intends to claim a bag and whether that bag is adhered to the display strip. The examiner notes the phrase “for arranging and attaching a plurality of product-enclosed bags for the display” is intended use and has only been considered so as much to determine if the prior art is usable as such. Additionally “the display” in line 2 lacks antecedent basis, as no display has previously been set forth in the instant claim. For purpose of examination the examiner interprets this claim as a display strip comprising a substrate layer and a sealant layer, where the sealant layer is adhereable to the surface of a bag by thermocompression bonding.

**Claims 10-15** are indefinite because they refer to “the sealant layer” and “the substrate layer” both of which have been defined in applicant's claim 1 as layers in the display strip. Therefore, for purposes of examination, the examiner has interpreted the limitations of these claims to apply to the display strip, as originally set forth in the parent claim.

**Applicant's claims 3 and 6** are considered indefinite for failing to define what applicant considers a “normal temperature”. Products may be displayed or arranged at room temperature, or other locations such as in a refrigerator or freezer, for which normal temperatures would be considerably lower. For purposes of examination the examiner considers “normal” to be an average room temperature of 20 to 25°C.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –



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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1, 2, 9-11, 13, 14, and 15** are rejected under 35 U.S.C. 102(b) as being anticipated by Super et al. (US Pat. 5,209,972).

**Regarding applicants claim 1, 2, and 11**, Super discloses a multilayer packaging film comprising a polyethylene terephthalate (PET) layer (*considered to be a substrate layer, col. 4 lines 55-56 and figure 1 #16*), and a heat sealable layer (*col. 1 lines 54-55 and figure 1 #12*).

The examiner considers a bag to be bondable to the heat sealable layer by the application heat and pressure, and thus considers the heat sealable layer a heat activated pressure sensitive layer. Super further discloses the heat sealable layer to be composed of low-density polyethylene, which the examiner considers to not have pressure sensitive properties before thermocompression, especially in light of applicant's disclosure of low density polyethylene as thermofusible resin having no heat activated pressure sensitive adhesive property at normal temperature.

**Regarding applicants claim 9**, Super discloses a metallized PET film, which the examiner considers to provide a coating of metal, which is further considered a metal substrate layer (*col. 4 lines 1-5*)

**Regarding applicants claim 10**, the examiner notes that applicant's parent is directed towards a display usable in arranging and attaching a plurality of product enclosed-bags. The examiner considers the display strip still capable of having product-enclosed bags attached to it even if those bags comprise a sealant layer and a substrate layer.

**Regarding applicants claim 13 and 14**, Super discloses a sealant layer and a substrate layer as shown above. Additionally, Super discloses a polymeric adhesive layer between the

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substrate layer and the heat sealable layer (*col. 4 lines 54-60 and figure 1 #14*). The examiner considers the substrate layer and the heat sealable layer to be laminated via the polymeric adhesive layer, as it is the intervening layer that adheres the layers together. The polymeric adhesive layer is further considered to be an “intermediate layer” as it is located between the substrate and heat sealable layers.

**Regarding applicant's claim 15**, Super discloses a multi-layer film comprising a PET substrate (*figure 3 #226*), a heat sealable layer (*figure 3 #212*), and an intermediate layer PET layer (*figure 3 #216*), where the intermediate layer and the heat sealable layer are laminated via an adhesive layer (*figure 3 #214*). *See also col. 5 lines 12-37.*

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Super. Super discloses a multi-layer film usable as a display strip, as shown above, but does not disclose examples of a heat seal layer with a thickness of 20µm. However, one of ordinary skill in the art at the time of the invention would have found it obvious to adjust the thickness of the heat seal layer so that it is thick enough to secure the package, but thin enough so that the package can be opened without its destruction.

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Furthermore, it would have been obvious to one having ordinary skill in the art at the time of the invention to adjust the thickness of the inner pressure sensitive adhesive for the intended application, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA) 1980)

**Claims 3, 6 and 7** are rejected under 35 U.S.C. 103(a) as being unpatentable over Super further in view of Dowbenko et al. (US Pat 3,897, 285).

**Regarding applicant's claims 3 and 6**, Super discloses a multi-layer film as shown above, but does not disclose a layer that has pressure sensitive adhesive properties at normal temperatures. However, Dowbenko discloses an adhesive for use as a binding resin in laminates that has pressure sensitive adhesive properties at normal temperature (*col. 1 lines 10-18*). At the time of the invention it would have been obvious to one of ordinary skill to use the pressure sensitive adhesive composition as the laminating adhesive in the multi-layer film of Super, because it provides exceptional adhesive properties especially with use as a laminating binder and when used on a flexible backing (*col. 6 lines 38-49*). The pressure sensitive adhesive of Dowbenko would further simplify the manufacturing process by removing the need for heat during lamination.

**Regarding applicants claim 7**, Dowbenko discloses an adhesive that is acrylic (*col. 1 line 51 – col. 2 line 10*) and has pressure sensitive adhesive properties at normal temperature (*col. 1 lines 10-18*)

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**Claims 4 and 5** are rejected under 35 U.S.C. 103(a) as being unpatentable over Super as applied to claims 1 and 2 above and further in view of Hume (US Pat 4,427,744).

Super discloses a multi-layer film as shown above, but does not explicitly disclose the heat sealable layer to contain a thermoplastic resin with a second transition temperature of -10 to 70°C, a solid plasticizer with a melting point of 70 to 120°C, and a tackifier. However, Hume discloses heat-activated pressure sensitive adhesive which may comprise a rubber, a resin and a plasticizer. The rubber may be a synthetic rubber such as polyurethane and is considered to have a second transition temperature of -10 to 70°C based on applicants disclosure as synthetic rubber as an example of a thermoplastic resin with a second transition temperature of -10 to 70°C. Hume further discloses a rosin compound to include polymers such as terpene, which is considered to be a tackifying resin based on applicant's disclosure of terpene resin as an exemplified tackifyier. Finally, Hume discloses a solid plasticizer component which includes dicyclohexyl phthalate plasticizers which are considered to have a melting point of 70 to 120°C based on applicant's disclosure of dicyclohexyl phthalate as an example of a solid plasticizer with a melting point of 70 to 120°C. (*col. 3 line 44 – col. 4 line 54*)

At the time of the invention it would have been obvious to one of ordinary skill in the art to use the heat activateable pressure sensitive adhesive of Hume for the heat seal layer of Super in order to provide superior bonding and quick activation (*col. 3 lines 14-19*), providing better processability.

**Claims 4 and 5** are rejected under 35 U.S.C. 103(a) as being unpatentable over Super in view of Dowbenko as applied to claim 3 above and further in view of Hume.

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Super and Dowbenko disclose a multi-layer film with a heat seal layer and a normal temperature pressure sensitive layer as shown above, but do not explicitly disclose the heat sealable layer to contain a thermoplastic resin with a second transition temperature of -10 to 70°C, a solid plasticizer with a melting point of 70 to 120°C, and a tackifier. However, Hume discloses a heat activatable pressure sensitive adhesive as shown above. It would have been obvious to one of ordinary skill in the art at the time of the invention to use the heat activateable pressure sensitive adhesive of Hume as the heat seal layer of Super to provide superior bonding and quick activation (*col. 3 lines 14-19*), providing better processability

**Claim 12** is rejected under 35 U.S.C. 103(a) as being unpatentable over Super in view of Robinson (US Pat. 3,241,662).

Super discloses a multi-layer film as shown above, but does not disclose a polypropylene bi-axially oriented film. However, Robinson discloses a bi-axially oriented polypropylene tape backing (*col. 1 lines 45-49*), which the examiner considers to be heat sealable. At the time of the invention it would have been obvious to one of ordinary skill in the art to use the bi-axially oriented polypropylene backing of Robinson as the sealant layer, because bi-axially oriented polypropylene films do not discolor on aging, are not sensitive to moisture, are resistant to elongation, and are economical (*col. 1 line 50 – col. 2 line 43*).

**Claim 16** is rejected under 35 U.S.C. 103(a) as being unpatentable over Gur et al. (US Pat 5,433,060) in view of Super.

Gur discloses a method for securing flexible packages to a strip by heat sealing (*col. 4 lines 58-67*), creating a display strip with product-enclosed bags heat-sealed to it. The method of

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Gur discloses use of a display carrier strip such as a metallized polyethylene. Gur does not explicitly disclose a multi-layer heat sealable film comprising a substrate layer and a sealant layer. However, Super discloses a multilayer film with a sealant layer, and a substrate layer which may be composed of metallized polyethylene, as shown above. At the time of the invention it would have been obvious to one of ordinary skill in the art to use the film of Super, which is commensurate in structure with the display carrier of Gur, in the method of attaching product-enclosed bags of Gur, because the multi-layer film of Super, is economical and requires minimum processing steps (*col. 3 lines 44-46*).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam C. Krupicka whose telephone number is (571)270-7086. The examiner can normally be reached on Monday - Thursday 7:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Adam C Krupicka/  
Examiner, Art Unit 1794

/JENNIFER MCNEIL/  
Supervisory Patent Examiner, Art Unit 1794